



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/AC.46/1998/3/Add.28
2 July 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Intergovernmental working group of experts
on human rights of migrants
Third session
Geneva, 23 - 27 November 1998

**INFORMATION AND COMMENTS
RECEIVED FROM GOVERNMENTS,
UNITED NATIONS BODIES, SPECIALIZED AGENCIES,
INTERGOVERNMENTAL AND NON-GOVERNMENTAL
ORGANIZATIONS**

Report of the Secretary-General

ANNEX

Submission from the Government of the Federal Republic of Yugoslavia
dated 9 February 1998

The Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office and other International Organizations presents its compliments to the Secretary-General of the United Nations and, with reference to his Note G/GO 212/26(1), of December 2, 1997, has the honour to transmit, enclosed herewith, the replies of the Government of the Federal Republic of Yugoslavia to the Questionnaire concerning the Commission on Human Rights resolution 1997/15 of April 3, 1997, entitled "Migrants and human rights".

The Permanent Mission of the FR of Yugoslavia avails itself of this opportunity to renew to the United Nations Secretary General the assurances of its highest consideration.

Geneva, February 9, 1998.



REPLIES TO THE QUESTIONNAIRE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR HUMAN RIGHTS ON THE HUMAN RIGHTS OF
MIGRANTS

Question 1

1. The Yugoslav territory has been an emigration area for decades. The Yugoslav out-migrations, the main form being migration for employment, have been predominantly aimed at the western European countries and also in the past few years, to a larger extent, at overseas countries.

According to the preliminary data of the Yugoslav Federal Office of Statistics, the total population of FR Yugoslavia amounted to 10.574 million in 1996. According to the data from available sources, about 1.5 million Yugoslav migrants with members of their families (pursuant to the questionnaire definition) are estimated to be living and working abroad in 1997, the largest number being in FR Germany, Switzerland, Austria, France, etc. The reliability of these estimates is largely subject to the fact that in the past few years the Yugoslav competent services have not had practically any access to foreign migration statistics; likewise, it is even more unknown how Yugoslav citizens who retained only Yugoslav citizenship or have dual citizenship in the country of immigration are statistically covered nor in what way migrations from FR Yugoslavia are distinguished from the ones from other states that have been created in the territory of former Yugoslavia.

2. Though FR Yugoslavia is not a country of immigration, employment of foreigners in FRY is regulated by the Law on Conditions for the Establishment of Employment Relationship with Foreign Citizens.

In accordance with the Law on Movement and Residence of Foreigners, foreigners are given permission to temporary residence in FR Yugoslavia on the basis of their employment therein. On that basis, 1,533 foreigners were permitted temporary residence in 1997.

Pursuant to the Yugoslav legislation, with a view to preventing illegal migrations via the territory of FR Yugoslavia, the competent Yugoslav authorities are taking measures to prevent illegal migrations from underdeveloped countries to economically more developed countries. Thus, illegal entry of about 300 foreigners was thwarted in 1997. In addition, due to the failure to possess the funds, return tickets, third-country visas, etc., about 20,000 foreigners were denied entry into FR Yugoslavia in 1997, mainly from the African, Asian and other countries of emigration for whom there was reasonable doubt of using the territory of FR Yugoslavia as transit for illegal departure for more developed countries of immigration.

Question 2

1. As early as the beginning of 1970s, along with the intensification of outgoing migratory flows and the establishment of the Yugoslav migrants' population with its specific needs and characteristics, the Yugoslav foreign migrations policy had been devised and its basic principles defined, on which the policy of foreign migrations of FR Yugoslavia, inaugurated in 1995, is also based. Accordingly, the approach to the protection and exercise of the rights of migrants that are governed by national legislation, including the right to information, education, provision of direct assistance and services, etc. has been devised on those principles.

1.1. Within the framework of the Yugoslav national legislation, the Law on Mediation for Employment of Yugoslav Citizens Abroad was passed in 1972, as the first in the series, replaced immediately in the following year by the Law on Conditions for Temporary Employment and Protection of Yugoslav Citizens Working Abroad, and in 1980 by The Law on the Protection of the Citizens of SFR Yugoslavia Working Temporarily Abroad was adopted and is still in force, the updating of which being under way.

The Law on the Protection of the Citizens of SFR Yugoslavia regulates all forms of employment with foreign employers and going away for work

abroad on the basis of economic, scientific-technical and other forms of co-operation with foreign partners as well as forms of protection of the citizens and their families that are involved in those processes. The protection is understood in the broadest sense and includes forms and ways of implementing protection as statutory obligation: obtaining work and residence permits and provision of information on conditions of work and residence in the country of employment, equal treatment with national workers, health, pension, disability and unemployment insurance, health care of members of the family, children's allowances, safety at work, accommodation and food, protection before courts and transfer of savings. In addition, the Law lays down forms of protection that are provided in accordance with conditions, requirements and possibilities : pre-school and other education both within the system of the country of immigration and in the mother tongue, social, cultural, recreational life and information, and the creation of conditions for return and reintegration upon return.

The adoption and implementation of national legislation in other spheres, such as: citizenship, passports, foreign trade, tariffs, etc. are also of relevance for the process of external migrations and the protection of the rights of migrants.

1.2. Education of Yugoslav migrants, and more specifically upbringing and education of children and youth through supplementary instructions in their mother tongue with a view to the preservation of the national identity, fostering of culture and ties with the country of origin, started in an organised way as far back as 1970. It was brought into effect in pursuance of the national legislation and relevant international instruments. This sort of education was organised depending on the political and legislative approach of the receiving countries, accompanied by the recruitment of teachers from Yugoslavia and considerable funds being earmarked by it for financing their work and preparation of textbooks and teaching aids.

1.3. Information in the mother tongue on developments in the country of origin and abroad and on topics of special interest has been provided for a number of years by Yugoslav dailies, periodicals and specialised magazines, radio and TV programmes, video cassettes, etc.

For the purpose of the implementation of direct protection of the rights of Yugoslav migrants at all stages of the migratory process, the competent Yugoslav authorities have on their own or in co-operation with the competent foreign authorities, prepared and published special information material (publications, leaflets and information sheets) either in the mother tongue or bilingual.

1.4. One of the measures that have been taken at the Yugoslav national level for the promotion of the protection of the rights of migrants is both professional and material assistance forwarded from Yugoslavia to associations of Yugoslav migrants abroad, by the establishment of which their right to association for the protection of their own interests is exercised. The scope of work of more than 700 associations is versatile and includes cultural, entertaining, sports, recreational and other activities of interest for life and work of Yugoslav migrants and for cherishing national culture, mother tongue and multiple ties with the homeland, including as of recently humanitarian activities. Immigration countries have also, to varying degrees, participated in the provision of material and financial support to activities of migrants' associations.

1.5. Provision of assistance and services to migrants in the course of the migration process is governed by the national legislation and bilateral agreements and other arrangements.

Within the framework of the institutional network at the national level, a number of government bodies and organisations is involved in the provision of assistance and services to Yugoslav migrants. Attached to the Federal Ministry of Labour, Health and Social Policy, specialised institutions have been established - Federal Institute for Labour Market and Migrations (former Federal Employment Bureau) and Federal Institute for Social Security. These

institutions are, inter alia, responsible for the provision of assistance and services in the field of information on employment opportunities and the exercise of the labour and social rights abroad, reintegration in the country of origin, provision of services for organised employment abroad, the exercise of rights in virtue of health, pension, disability and unemployment insurance, vocational training of migrants, provision of expert assistance to associations of Yugoslav migrants, etc.

The key role in the provision of assistance and services to Yugoslav migrants during their work and stay abroad is played by diplomatic and consular missions of FR Yugoslavia, under numerous bilateral and multilateral instruments in the field of the consular protection ratified by Yugoslavia.

Provision of services and assistance by social counsellors who were either sent from Yugoslavia or recruited from among the migrants, on the basis of co-operation with the competent bodies and organisations for social work and specialised institutions in the countries of immigration, was also of relevance for the exercise of the rights of Yugoslav migrants during their stay abroad.

2. Yugoslavia, as an original member of the United Nations Organisation, has become the party to the majority of basic instruments on human rights, adopted within the UN system, and enumerated in the Commission on Human Rights resolution 1997/15. Similarly, as the country of emigration, Yugoslavia played an active part in and gave its contribution to the preparation and adoption of relevant international documents on the protection of the rights of migrants within the framework of the United Nations, ILO and other international and regional organisations.

3. Considerable role is also played in the exercise of the rights of migrants by numerous bilateral instruments concluded between the governments and other bodies.

3.1. In the period 1965 - 1970 employment agreements were concluded with 7 western European countries and one overseas country. In accordance with these agreements, accompanying administrative arrangements were made, joint commissions were established and were in operation along with liaison bodies for their implementation.

The agreements provided a sufficient formal and legal basis for a relatively favourable treatment of Yugoslav migrants with regard to the rights contained therein and a framework for the exercise of some other rights of a broader interest to their overall status and the status of members of their families (social gatherings, cultural, entertaining, sports activities, information in their mother tongue, instruction in their mother tongue, vocational education, return and reintegration). However, despite actual co-operation with regard to the exercise of a broader range of rights, all requests of the Yugoslav side to regulate them also formally by updating the existing agreements were not accepted by the competent authorities of the countries of immigration.

In countries with which bilateral agreements on employment were not concluded, the competent Yugoslav institution concluded with employers or their associations general contracts on conditions of and procedures for employment, regulating thereby basic forms of protection and other rights of migrants.

In addition to the bilateral agreement on employment, Yugoslavia concluded with FR Germany the Agreement on sending workers from organisations of associated labour from Yugoslavia and their employment in FR Germany under a contract on execution of projects.

The basis for the engagement of Yugoslav citizens within the framework of the scientific and technical co-operation are agreements reached with many countries and international organisations.

3.2. With a view to protecting the rights of its migrants, Yugoslavia concluded 19 bilateral agreements on social security.

These agreements, based on provisions of the international law, ensure specifically the continuity in the exercise of rights, preservation of acquired rights and the possibility to exercise rights in the territories of both countries, including the transfer of cash benefits. For the purpose of the application of the agreements, appropriate arrangements were concluded and the procedure for work of liaison bodies and insurance carriers established. Thus the Convention on Social Security with Austria provides, on principles of reciprocity, for unemployment insurance while this issue was settled by a special agreement with FR Germany.

3.3. The right to preserve and foster the national culture and mother tongue and to maintain connections with the country of origin were also the subject of special agreements and other arrangements.

Conditions and facilities for upbringing and education in the mother tongue were laid down by bilateral agreements on cultural and educational co-operation along with special programmes of cultural and educational co-operation and jointly drawn up relevant documents that were concluded by Yugoslavia with a number of countries.

Yugoslavia is also party to 7 multilateral and 14 bilateral agreements on the recognition of diplomas conducive to the equal treatment of schooling attainments of Yugoslav migrants.

The right to receive information in the mother tongue on opportunities for employment and procedures therefor, conditions of work, etc. has been ensured by the conclusion of arrangements and other forms of agreement with the competent authorities of the country of immigration.

3.4. International arrangements for co-operation of non-governmental organisations were also of relevance for the exercise of the rights of Yugoslav migrants during their work and stay abroad.

3.5. The rights related to the return to the country of origin belong to those rights in respect of which relatively modest basis was created for bilateral and multilateral co-operation. Concrete arrangements concerning the

return and reintegration of returnees Yugoslavia made only with the Netherlands, FR Germany, France and the Fund for Reintegration of the Council of Europe.

Question 3

1. As far as the exercise of the rights of foreigners in FR Yugoslavia is concerned, no cases or complaints whatsoever involving discrimination on any basis with regard to their rights have been reported. Likewise, there were no cases of collective - mass expulsions of foreigners from FR Yugoslavia.

2. As for Yugoslav migrants abroad, it should be stressed that owing to the development of the national legislation, an active part of Yugoslavia in international bodies and instruments, and developed bilateral co-operation, a solid legal basis was created for Yugoslav migrations, as a part of the global process of international migrations, to take place in a regular way and to achieve, for a considerable period of time, a relatively satisfactory status of the majority of Yugoslav migrants from the viewpoint of the implementation of their human rights.

However, due to the international sanctions, FR Yugoslavia has been denied access to international organisations and meetings while the countries of immigration have unilaterally interrupted the application of international agreements and forms of co-operation provided for in them which has had negative effects in all the spheres of either direct or indirect interest to migrations and the exercise of the rights of Yugoslav migrants at all stages of the migratory process.

In conditions of the crisis in the territory of former Yugoslavia and the civil war, caused by the secessionist policy of former Yugoslav republics, and the sanctions perpetrated against FR Yugoslavia, the Yugoslav migrants, by the very fact of being the nationals of the country under sanctions, suffered the effects of denigration and of depicting, through propaganda, the Serb and Montenegrin people as a disruptive people. In practice, this assumed different

forms of discrimination regarding the rights acquired on the basis of work and residence to such an extent that meant in fact violation of human rights. They were exposed, inter alia, to intensified police control and such measures as search of apartments, business premises, clubs and associations, politically biased legal proceedings and even pronouncing of verdicts on the basis of accusations and testimonies of citizens of other nationalities.

More often, certain forms of discrimination to which Yugoslav migrants had already been exposed as citizens of the so-called third countries, occurred. They materialised in the following: in case Yugoslav migrants lost their employment, they could find another employment with difficulty and were exposed to the danger of losing their work and residence permits, often due to the abuse of discretionary rights on the part of the competent local authorities; priority was given in taking up new employment even to other migrants from the third countries; by tightening visa requirements for FRY, the exercise of the right to family reunion and communication with members of the family in the country of origin were made more difficult; requirements for registration of associations of Yugoslav migrants became more stringent and subsidies of the receiving countries for their activities were denied or discontinued.

2.1. Lack of the application of bilateral agreements in conditions of a continued trend of outflow of labour from Yugoslavia has had as a result that the process has been taking place in an unorganised way, past the Yugoslav competent authorities, and from the standpoint of the receiving countries, often illegally. This has led to the situation that the structure of outgoing flows has become unfavourable as regards the Yugoslav labour market and development of the country, in view of a high proportion of the young and highly qualified persons in whom the countries of immigration continue to have interest and who are provided with direct assistance for employment in their respective territories by their diplomatic missions in FR Yugoslavia.

By the very fact that employment is mainly taking place irregularly and in the absence of application of the agreed forms of co-operation of competent authorities, one of the basic rights is often, in the very beginning of the

migratory process called into question - the right to proper information on conditions of employment and work, the rights and obligations deriving from work and residence in the receiving country and to appropriate protection and exposes potential migrants to high expenditures and other risks.

2.2 A graver form of discrimination and threatening of human rights represent measures aimed at endangering work or residence permits of migrants owing to their activity in lending support to FR Yugoslavia within the framework of the associations or clubs of migrants or in trade union and political organisations of the receiving country.

2.3 Examples of a systematic discrimination on national basis against the children of Serbian and Montenegrin nationality with respect to education in the mother tongue have been noted. Thus, individual countries took a decision to suspend instruction in the mother tongue for these children or discontinued subsidies for the organisation of the instruction of the mother tongue and culture only for them and by decisions of their governments made requisition of textbooks and books from FR Yugoslavia impossible.

Though these restrictive measures have been in the meantime revoked, they have had serious effects on the exercise of the rights of children of Yugoslav migrants to education in their mother tongue, the quality and coverage of children by the instruction in the mother tongue.

2.4 Owing to the severance of financial transactions with FR Yugoslavia, the majority of receiving countries withheld for a considerable period of time the right to the transfer of pensions and other welfare benefits and savings to Yugoslavia. This resulted not only in extremely negative effects on material and social status of the beneficiaries of these benefits and/or members of their families living in Yugoslavia but by instructing Yugoslav citizens to exercise the right in a foreign territory brought about the problems of obtaining visas and of travelling expenses. The exercise of the right was in certain cases accompanied by the limitation of the amount that may be taken out. In addition, inability to exercise the mentioned rights adversely affected decisions of migrants to return to FR Yugoslavia.

2.5 As one of the forms of discrimination practised against migrants in individual countries, affecting Yugoslav migrants as well, that may be singled out are various administrative and other measures aimed at substituting positive processes of integration by selective integration, mostly to the detriment of the elderly, unemployed and diseased migrants, and by forced and accelerated assimilation having a direct reflection on the possibility of free choice of one's own living and working prospects. The measures of forced assimilation are particularly aimed at younger generations narrowing thereby their opportunities for learning the mother tongue and fostering the national culture as illustrated in point 2.3.

Question 4

The ILO Convention concerning Migration for Employment (Revised), 1949 (No.97) was signed by Yugoslavia on July 1, 1949 and ratified on February 27, 1968. Yugoslavia also ratified Annexes 1 and 2 and excluded, by a declaration appended to its ratification, Annex 3 from its ratification.

The Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143) was signed by Yugoslavia on June 24, 1975 and ratified on November 26, 1980.

As far as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in the ratification of which FR Yugoslavia is very much interested, witnessed by the fact that it was among the first to support its adoption and took an active part in all stages of its drafting, Yugoslavia as early as 1991 instituted the procedure for its ratification. Unfortunately, the procedure was interrupted due to reasons that were beyond influence of FR Yugoslavia - the crisis in the territory of former Yugoslavia, disintegration of former SFRY owing to forced secession of former Yugoslav republics, the sanctions imposed by the Security Council of the United Nations against FRY and preventing FRY from taking full-fledged participation in the proceedings of the main bodies of the United Nations and international organisations.